

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

MICHAEL N. MILBY
CLERK OF COURT
1701 W. BUS. HWY. 83, SUITE 1011
McALLEN, TEXAS 78501

March 6, 2008

E-filing

FILED
MAR 17 2008
CLERK OF COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN, TEXAS
(956) 618-8065
www.tx.uscourts.gov

Clerk, U.S. District Court
International Box 36060
San Francisco, CA 94102

CV 00

1463

Attn: Civil Section

Re: Civil Action No. M-08-003
Salinas; et al vs Amtreck of Texas; et al

MEJ

Dear Clerk:

Enclosed please find a certified copy of an order transferring the above-captioned case to your district. The case file can be accessed through the Electronic Case Filing/Pacer System.

Please complete the receipt below and return the attached copy of this letter.

Sincerely,

/s/ _____
Frances Zamarripa
Deputy Clerk

Received and filed under Civil Action No. _____ on this the _____
day of _____, 2008.

Clerk, U.S. District Court

Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

E-filing

REYNALDO SALINAS, ISABEL)
SALINAS AND JESSICA SALINAS,)
INDIVIDUALLY AND AS)
REPRESENTATIVE OF THE ESTATE)
OF JOSE MARTIN SALINAS)

VS.)

AMTECK OF TEXAS, AMTECK OF)
KENTUCKY, INC. D/B/A KENTUCKY)
AMTECK, INC., U.S. TRADES,)
LLC, HASKELL COMPANY D/B/A)
THE HASKELL COMPANY OF FLORIDA,)
AND SNORKEL INTERNATIONAL, INC.)

CIVIL ACTION NUMBER

M-08-003

MEJ

ORDER OF TRANSFER

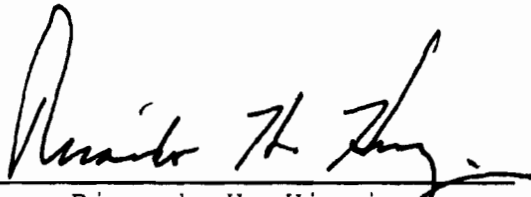
On the 5th day of March, 2008, came on to be heard "Defendant, Amteck of Kentucky, Inc. dba Kentucky Amteck, Inc.'s Motion to Dismiss or Transfer Venue and Original Answer" (Docket Entry Number 12), "Defendant, Haskell Company d/b/a The Haskell Company of Florida's Motion to Dismiss or Transfer Venue and Original Answer" (Docket Entry Number 15), "Motion to Dismiss for Improper Venue, or in the Alternative Motion to Transfer, and Brief in Support of U.S. Trades, LLC" (Docket Entry Number 30), and "First Amended Motion of Defendant, Snorkel International, Inc., to Dismiss, or in the Alternative, Motion to Transfer Venue, and Brief in Support" (Docket Entry Number 35), and the Court, after having considered the pleadings on file, the arguments of counsel and the applicable law, is of the opinion that said motions should be granted for the

reasons stated on the record and to the extent stated below. It is, therefore,

ORDERED, ADJUDGED and DECREED that the above-styled case is hereby transferred to the United States District Court for the Northern District of California, San Francisco Division.

The Clerk shall send a copy of this Order of Transfer to counsel for the parties.

DONE on this 5th day of March, 2008, at McAllen, Texas.


Ricardo H. Hinojosa
UNITED STATES DISTRICT JUDGE

TRUE COPY I CERTIFY
ATTEST:
MICHAEL N. MILBY, CLERK
By Shirley Camacho
Deputy Clerk

CLOSED, TRANSFERRED

**U.S. District Court
SOUTHERN DISTRICT OF TEXAS (McAllen)
CIVIL DOCKET FOR CASE #: 7:08-cv-00003**

DO NOT DOCKET. CASE HAS BEEN TRANSFERRED OUT. Salinas et al v. Amteck of Kentucky, Inc. DBA Kentucky Amteck, Inc. et al
Assigned to: Judge Ricardo H. Hinojosa
Case in other court: 389th District court of Hidalgo County, C-50-00007-H
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 01/08/2008
Date Terminated: 03/06/2008
Jury Demand: None
Nature of Suit: 360 P.I.: Other
Jurisdiction: Diversity

Plaintiff

Reynaldo Salinas

represented by **Wesley Todd Ball**
Farrar And Ball
1010 Lamar
Ste 1600
Houston, TX 77002
713-221-8300
Fax: 713-221-8301
Email: wes@fbtrial.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael A Hawash
Farrar Ball
1010 Lamar
#1600
Houston, TX 77002
713-221-8300
Fax: 713-221-8301
Email: michael@fbtrial.com
ATTORNEY TO BE NOTICED

Plaintiff

Isabel Salinas

represented by **Wesley Todd Ball**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael A Hawash
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Jessica Salinas

represented by **Wesley Todd Ball**

*Individually, and as Representative of
the Estate of Jose Martin Salinas*

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael A Hawash
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

**Amteck of Kentucky, Inc. DBA
Kentucky Amteck, Inc.**

represented by **Rebecca Rivers Kieschnick**
Donnell, Abernethy & Kieschnick, P.C.

555 N Carancahua
Ste 400
Corpus Christi, TX 78478
361-866-8104
Fax: 361-880-5618
Email: rkieschnick@dakpc.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sandra Sterba-Boatwright
Attorney at Law
555 N Carancahua
Ste 400
Corpus Christi, TX 78478
361-888-5551
Fax: 361-880-5618
Email: ssterba@dakpc.com
ATTORNEY TO BE NOTICED

Defendant

Amteck of Texas
TERMINATED: 02/25/2008

represented by **Sandra Sterba-Boatwright**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rebecca Rivers Kieschnick
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

US Trades, LLC

represented by **Bryan R Haynes**
Locke Lord Bissell & Liddell LLP
2200 Ross Ave
Ste 2200
Dallas, TX 75201

214-740-8554
 Fax: 214-756-8554
 Email: bhaynes@lockeliddell.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jason Robert Marlin
 Locke Lord et al
 2200 Ross Ave
 Dallas, TX 75201-6776
 214-740-8540
 Fax: 214-756-8540
 Email: jmarlin@lockelord.com
ATTORNEY TO BE NOTICED

Defendant

**Haskell Company dba The Haskell
 company of Florida**

represented by **Sandra Sterba-Boatwright**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Snorkel International, Inc.

represented by **Tonya Beane Webber**
 Porter Rogers et al
 800 N Shoreline Blvd
 Ste 800
 Corpus Christi, TX 78401
 361-880-5808
 Fax: 361-880-5844
 Email: twebber@prdg.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/08/2008	<u>1</u>	NOTICE OF REMOVAL from 389th District court of Hidalgo County, case number C-2750-07-H (Filing fee \$ 350 receipt number 3364699) filed by Amteck of Kentucky, Inc. DBA Kentucky Amteck, Inc.. (Attachments: # <u>1</u> Exhibit State Court Documents and Citation# <u>2</u> Exhibit Affidavit of Corey Bard# <u>3</u> Exhibit Notice to State Court of Removal# <u>4</u> Exhibit Notice to Plaintiffs of Removal# <u>5</u> Appendix Index of Documents Filed# <u>6</u> Appendix (Anticipated) Counsel of Record) (Kieschnick, Rebecca) (Entered: 01/08/2008)
01/08/2008	<u>2</u>	CONSENT to Removal by Amteck of Texas, filed.(Sterba-Boatwright, Sandra) (Entered: 01/08/2008)
01/08/2008	<u>3</u>	CONSENT to Removal by Haskell Company dba The Haskell company of Florida, filed.(Sterba-Boatwright, Sandra) (Entered: 01/08/2008)

01/08/2008	<u>4</u>	CONSENT to Removal by US Trades, LLC, filed.(Haynes, Bryan) (Entered: 01/08/2008)
01/10/2008	<u>5</u>	CONSENT to Removal by Snorkel International, Inc., filed.(Webber, Tonya) (Entered: 01/10/2008)
01/11/2008	<u>6</u>	ORDER for Initial Pretrial and Scheduling Conference and Order to Disclose Interested Persons. Initial Conference set for 3/5/2008 at 02:30 PM before Judge Ricardo H. Hinojosa. Parties notified.(bgarces,) (Entered: 01/11/2008)
01/15/2008	<u>7</u>	MOTION U.S. TRADES, LLC's MOTION TO ENLARGE TIME TO MOVE, ANSWER OR OTHERWISE PLEAD, AND BRIEF IN SUPPORT by US Trades, LLC, filed. Motion Docket Date 2/4/2008. (Marlin, Jason) (Entered: 01/15/2008)
01/15/2008	<u>8</u>	PROPOSED ORDER re: <u>7</u> MOTION U.S. TRADES, LLC's MOTION TO ENLARGE TIME TO MOVE, ANSWER OR OTHERWISE PLEAD, AND BRIEF IN SUPPORT, filed.(Marlin, Jason) (Entered: 01/15/2008)
01/15/2008	<u>9</u>	MOTION for Extension of Time Pre-Answer Motions by Snorkel International, Inc., filed. Motion Docket Date 2/4/2008. (Webber, Tonya) (Entered: 01/15/2008)
01/15/2008	<u>10</u>	PROPOSED ORDER re: <u>9</u> MOTION for Extension of Time Pre-Answer Motions, filed.(Webber, Tonya) (Entered: 01/15/2008)
01/15/2008	<u>11</u>	ANSWER to [1-1] Complaint by Amteck of Kentucky, Inc. DBA Kentucky Amteck, Inc., filed. (Attachments: # <u>1</u> Exhibit Plaintiffs' California Petition# <u>2</u> Exhibit Cal OSH Accident Report# <u>3</u> Exhibit Statements of California Witnesses# <u>4</u> Proposed Order Granting Motion to Dismiss)(Kieschnick, Rebecca) (Entered: 01/15/2008)
01/15/2008	<u>12</u>	MOTION to Transfer Case to Northern District of California, San Francisco Division by Amteck of Kentucky, Inc. DBA Kentucky Amteck, Inc., filed. Motion Docket Date 2/4/2008. (Attachments: # <u>1</u> Exhibit Plaintiff's California Complaint# <u>2</u> Exhibit Cal OSH Acciedent Report# <u>3</u> Exhibit Statement of California Witnesses# <u>4</u> Proposed Order Granting the Motion to Dismiss)(Kieschnick, Rebecca) (Entered: 01/15/2008)
01/15/2008	<u>13</u>	MOTION to Dismiss (<i>12b motion</i>) by Amteck of Texas, filed. Motion Docket Date 2/4/2008. (Attachments: # <u>1</u> Exhibit Plaintiffs' California complaint# <u>2</u> Exhibit Cal OSH Report# <u>3</u> Exhibit California Witness Statements# <u>4</u> Proposed Order Dismissing Claims agains Amteck of Texas)(Sterba-Boatwright, Sandra) (Entered: 01/15/2008)
01/15/2008	<u>14</u>	ANSWER to [1-1] Complaint by Amteck of Texas, filed. (Attachments: # <u>1</u> Exhibit Plaintiffs' California Complaint# <u>2</u> Exhibit Cal OSH Accident Report# <u>3</u> Exhibit California Witness Statements)(Sterba-Boatwright, Sandra) (Entered: 01/15/2008)
01/15/2008	<u>15</u>	MOTION to Transfer Case to Northern District of California, San

		Francisco Division by Haskell Company dba The Haskell company of Florida, filed. Motion Docket Date 2/4/2008. (Attachments: # <u>1</u> Exhibit Plaintiffs' California Complaint# <u>2</u> Exhibit Cal OSH Accidnet Report# <u>3</u> Exhibit Statements of California Witnesses# <u>4</u> Proposed Order Granting Haskell Company's Motion to Dismiss)(Sterba-Boatwright, Sandra) (Entered: 01/15/2008)
01/15/2008	<u>16</u>	ANSWER to [1-1] Complaint by Haskell Company dba The Haskell company of Florida, filed. (Attachments: # <u>1</u> Exhibit Plaintiffs' California Complaint# <u>2</u> Exhibit Cal OSH Accident Report# <u>3</u> Exhibit Statements of California witnesses)(Sterba-Boatwright, Sandra) (Entered: 01/15/2008)
01/22/2008	<u>17</u>	ORDER striking <u>7</u> Motion to Enlarge Time to Move, Answer or Otherwise Plead.(Signed by Judge Ricardo H. Hinojosa) Parties notified.(bgarces,) (Entered: 01/22/2008)
01/22/2008	<u>18</u>	Unopposed MOTION for Extension of Time Answer or Otherwise Plead by US Trades, LLC, filed. Motion Docket Date 2/11/2008. (Attachments: # <u>1</u> Proposed Order)(Haynes, Bryan) (Entered: 01/22/2008)
01/23/2008	<u>19</u>	AMENDED <u>9</u> MOTION by Snorkel International, Inc., filed. Motion Docket Date 2/12/2008. (Webber, Tonya) (Entered: 01/23/2008)
01/23/2008	<u>20</u>	PROPOSED ORDER <i>GRANTING</i> re: <u>19</u> AMENDED <u>9</u> MOTION, filed. (Webber, Tonya) (Entered: 01/23/2008)
01/23/2008	<u>21</u>	ORDER granting <u>18</u> US Trades' Motion for Extension of Time to Move, Answer or Otherwise Plead until 1/29/08.(Signed by Judge Ricardo H. Hinojosa) Parties notified.(bgarces,) (Entered: 01/24/2008)
01/25/2008	<u>22</u>	CERTIFICATE OF INTERESTED PARTIES by Snorkel International, Inc., filed.(Webber, Tonya) (Entered: 01/25/2008)
01/25/2008	<u>23</u>	CERTIFICATE OF INTERESTED PARTIES by U.S. Trades, LLC, filed.(Marlin, Jason) (Entered: 01/25/2008)
01/25/2008	<u>24</u>	CERTIFICATE OF INTERESTED PARTIES by Amteck of Texas, filed. (Sterba-Boatwright, Sandra) (Entered: 01/25/2008)
01/25/2008	<u>25</u>	CERTIFICATE OF INTERESTED PARTIES by Haskell Company DBA The Haskell Company of Florida, filed.(Sterba-Boatwright, Sandra) (Entered: 01/25/2008)
01/25/2008	<u>26</u>	CERTIFICATE OF INTERESTED PARTIES by Amteck of Kentucky, Inc. DBA Kentucky Amteck, Inc., filed.(Kieschnick, Rebecca) (Entered: 01/25/2008)
01/27/2008	<u>27</u>	ORDER granting <u>19</u> Amended Motion to enlarge time to move, answer or otherwise plead in response to petition.(Signed by Judge Ricardo H. Hinojosa) Parties notified.(bgarces,) (Entered: 01/28/2008)
01/28/2008	<u>28</u>	CERTIFICATE OF INTERESTED PARTIES by Plaintiffs, filed.(Ball, Wesley) (Entered: 01/28/2008)
01/29/2008	<u>29</u>	MOTION to Dismiss <i>and Brief in Support</i> by US Trades, LLC, filed.

		Motion Docket Date 2/19/2008. (Attachments: # <u>1</u> Proposed Order Defendant U.S. Trades LLC's 12(b)(6) Motion to Dismiss and Brief in Support)(Marlin, Jason) (Entered: 01/29/2008)
01/29/2008	<u>30</u>	MOTION to Dismiss <i>for Improper Venue, or in the Alternative Motion to Transfer, and Brief in Support of U.S. Trades, LLC</i> by US Trades, LLC, filed. Motion Docket Date 2/19/2008. (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 2# <u>3</u> Exhibit 3# <u>4</u> Exhibit 4# <u>5</u> Exhibit 5# <u>6</u> Exhibit 5A# <u>7</u> Exhibit 5B# <u>8</u> Exhibit 6# <u>9</u> Exhibit 7# <u>10</u> Exhibit 8# <u>11</u> Exhibit 9# <u>12</u> Proposed Order)(Haynes, Bryan) (Entered: 01/29/2008)
01/29/2008	<u>31</u>	MOTION to Dismiss <i>For Lack Of Jurisdiction</i> by Snorkel International, Inc., filed. Motion Docket Date 2/19/2008. (Attachments: # <u>1</u> Affidavit Richard L. Hoffelmeyer# <u>2</u> Exhibit 1-A Purchase Order# <u>3</u> Exhibit Bill of Lading# <u>4</u> Exhibit 1-C Invoice# <u>5</u> Exhibit Complaint)(Webber, Tonya) (Entered: 01/30/2008)
01/30/2008	<u>32</u>	PROPOSED ORDER <i>Snorkel's re: 31</i> MOTION to Dismiss <i>For Lack Of Jurisdiction</i> , filed.(Webber, Tonya) (Entered: 01/30/2008)
01/30/2008	<u>33</u>	Unopposed MOTION for Extension of Time 12b Motions by Snorkel International, Inc., filed. Motion Docket Date 2/19/2008. (Webber, Tonya) (Entered: 01/30/2008)
01/30/2008	<u>34</u>	Unopposed PROPOSED ORDER re: <u>33</u> Unopposed MOTION for Extension of Time 12b Motions, filed.(Webber, Tonya) (Entered: 01/30/2008)
01/30/2008	<u>35</u>	First AMENDED <u>31</u> MOTION by Snorkel International, Inc., filed. Motion Docket Date 2/19/2008. (Attachments: # <u>1</u> Affidavit Hoffelmeyer# <u>2</u> Exhibit 1-A Purchase Order# <u>3</u> Exhibit 1-B - Bill of Lading# <u>4</u> Exhibit 1-C - Invoice# <u>5</u> Exhibit 2 - Complaint)(Webber, Tonya) (Entered: 01/30/2008)
01/30/2008	<u>36</u>	PROPOSED ORDER <i>GRANTING</i> re: <u>35</u> First AMENDED <u>31</u> MOTIONFirst AMENDED <u>31</u> MOTION, filed.(Webber, Tonya) (Entered: 01/30/2008)
02/04/2008	<u>38</u>	ORDER granting <u>33</u> Unopposed Second Motion to Enlarge the Time to Move, Answer, or Otherwise Plead in Response to Plaintiff's Original Petition. (Signed by Judge Ricardo H. Hinojosa) Parties notified. (mzamarripa,) (Entered: 02/06/2008)
02/05/2008	<u>37</u>	Unopposed MOTION for Extension of Time Response to Defendants' Motions by Isabel Salinas, filed. Motion Docket Date 2/25/2008. (Ball, Wesley) (Entered: 02/05/2008)
02/22/2008	<u>39</u>	Joint JOINT DISCOVERY/CASE MANAGEMENT PLAN by Snorkel International, Inc., Amteck of Kentucky, Inc. DBA Kentucky Amteck, Inc., Reynaldo Salinas, Isabel Salinas, Jessica Salinas, Amteck of Texas, US Trades, LLC, Haskell Company dba The Haskell company of Florida, filed.(Sterba-Boatwright, Sandra) (Entered: 02/22/2008)
02/22/2008	<u>40</u>	Unopposed MOTION for Extension of Time Respond to Defendants

		Motions by Reynaldo Salinas, Isabel Salinas, Jessica Salinas, filed. Motion Docket Date 3/13/2008. (Ball, Wesley) (Entered: 02/22/2008)
02/22/2008	<u>41</u>	Agreed PROPOSED ORDER re: <u>40</u> Unopposed MOTION for Extension of Time Respond to Defendants Motions, filed.(Ball, Wesley) (Entered: 02/22/2008)
02/25/2008	<u>42</u>	NOTICE of Dismissal as to Amteck of Texas by Reynaldo Salinas, Isabel Salinas, Jessica Salinas, filed. (Ball, Wesley) (Entered: 02/25/2008)
02/25/2008	<u>43</u>	ORDER granting <u>40</u> Plaintiff's Unopposed Motion to Enlarge Time to Respond to Various Motions Filed by Defendants..(Signed by Judge Ricardo H. Hinojosa) Parties notified.(mzamarripa,) (Entered: 02/25/2008)
02/29/2008	<u>44</u>	RESPONSE in Opposition to <u>31</u> MOTION to Dismiss <i>For Lack Of Jurisdiction</i> , <u>35</u> First AMENDED <u>31</u> MOTIONFirst AMENDED <u>31</u> MOTION, filed by Reynaldo Salinas, Isabel Salinas, Jessica Salinas. (Attachments: # <u>1</u> Proposed Order # <u>2</u> Exhibit # <u>3</u> Exhibit # <u>4</u> Exhibit # <u>5</u> Exhibit # <u>6</u> Exhibit # <u>7</u> Exhibit)(Ball, Wesley) (Entered: 02/29/2008)
02/29/2008	<u>45</u>	RESPONSE to <u>15</u> MOTION to Transfer Case to Northern District of California, San Francisco Division, <u>13</u> MOTION to Dismiss (<i>12b motion</i>) MOTION to Dismiss (<i>12b motion</i>), <u>30</u> MOTION to Dismiss <i>for Improper Venue, or in the Alternative Motion to Transfer, and Brief in Support of U.S. Trades, LLC</i> , <u>35</u> First AMENDED <u>31</u> MOTIONFirst AMENDED <u>31</u> MOTION, filed by Reynaldo Salinas, Isabel Salinas, Jessica Salinas. (Attachments: # <u>1</u> Exhibit)(Ball, Wesley) (Entered: 02/29/2008)
02/29/2008	<u>46</u>	RESPONSE in Opposition to <u>35</u> First AMENDED <u>31</u> MOTIONFirst AMENDED <u>31</u> MOTION, filed by Reynaldo Salinas, Isabel Salinas, Jessica Salinas. (Attachments: # <u>1</u> Proposed Order)(Ball, Wesley) (Entered: 02/29/2008)
02/29/2008	<u>47</u>	RESPONSE in Opposition to <u>12</u> MOTION to Transfer Case to Northern District of California, San Francisco Division, filed by Reynaldo Salinas, Isabel Salinas, Jessica Salinas. (Attachments: # <u>1</u> Proposed Order)(Ball, Wesley) (Entered: 02/29/2008)
02/29/2008	<u>48</u>	RESPONSE in Opposition to <u>15</u> MOTION to Transfer Case to Northern District of California, San Francisco Division, filed by Reynaldo Salinas, Isabel Salinas, Jessica Salinas. (Attachments: # <u>1</u>)(Ball, Wesley) (Entered: 02/29/2008)
02/29/2008	<u>49</u>	RESPONSE in Opposition to <u>30</u> MOTION to Dismiss <i>for Improper Venue, or in the Alternative Motion to Transfer, and Brief in Support of U.S. Trades, LLC</i> , filed by Reynaldo Salinas, Isabel Salinas, Jessica Salinas. (Attachments: # <u>1</u> Proposed Order)(Ball, Wesley) (Entered: 02/29/2008)
02/29/2008	<u>50</u>	RESPONSE in Opposition to <u>29</u> MOTION to Dismiss <i>and Brief in Support</i> , filed by Reynaldo Salinas, Isabel Salinas, Jessica Salinas.

		(Attachments: # <u>1</u> Proposed Order # <u>2</u> Exhibit)(Ball, Wesley) (Entered: 02/29/2008)
02/29/2008	<u>51</u>	Amended CERTIFICATE OF INTERESTED PARTIES by Snorkel International, Inc., filed.(Webber, Tonya) (Entered: 02/29/2008)
03/05/2008		Minute Entry for proceedings held before Judge Ricardo H. Hinojosa. Initial PRETRIAL CONFERENCE held on 3/5/2008. All parties present. The Court addresses the Motions to Transfer and Motions to Dismiss. After hearing counsels' arguments and reviewing the pleadings on file the Court will not dismiss this case but will transfer the case to the N.D. of California. Appearances: Michael A Hawash, Bryan R Haynes, Rebecca Rivers Kieschnick, Sandra Sterba-Boatwright, Tonya Beane Webber.(ERO:Tony Tijerina), filed.(smartinez,) (Entered: 03/05/2008)
03/05/2008	<u>52</u>	ORDER TO TRANSFER CASE to Northern District of California, San Francisco Division.(Signed by Judge Ricardo H. Hinojosa) Parties notified.(mzamarripa,) (Entered: 03/06/2008)
03/06/2008	<u>53</u>	Interdistrict transfer to Northern District of California, San Francisco Division. Certified copy of transfer order will be sent., filed. (mzamarripa,) (Entered: 03/06/2008)

PACER Service Center			
Transaction Receipt			
03/19/2008 14:00:02			
PACER Login:	us4077	Client Code:	
Description:	Docket Report	Search Criteria:	7:08-cv-00003
Billable Pages:	5	Cost:	0.40

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

REYNALDO SALINAS, ISABEL §
SALINAS, AND JESSICA SALINAS, §
INDIVIDUALLY AND AS §
REPRESENTATIVE OF THE ESTATE §
OF JOSE MARTIN SALINAS §

PLAINTIFFS §

VS. §

CIVIL ACTION NO. 7:08-cv-00003

AMTECK OF TEXAS, AMTECK OF §
KENTUCKY, INC. DBA KENTUCKY §
AMTECK, INC., U.S. TRADES, LLC, §
HASKELL COMPANY DBA THE §
HASKELL COMPANY OF FLORIDA §
SNORKEL INTERNATIONAL, INC. §

DEFENDANTS §

DEFENDANT AMTECK OF KENTUCKY, INC.'S (DBA KENTUCKY AMTECK,
INC.) NOTICE OF REMOVAL

Defendant Amteck of Kentucky, Inc. DBA Kentucky Amteck, Inc., files its
Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446 and states as follows:

1. Plaintiff commenced a civil action in the 389th District Court of
Hidalgo County, Texas, which is assigned Cause No. C-2750-07-H, under the caption
*Reynaldo Salinas, Isabel Salinas, and Jessica Salinas, Individually and as Representative
of the Estate of Jose Martin Salinas, Plaintiff, v. Amteck of Texas, Amteck of Kentucky,
Inc. DBA Kentucky Amteck, Inc., U.S. Trades LLC, Haskell Company DBA The Haskell
Company of Florida and Snorkel International, Inc., Defendants.* Copies of the citation

as to Amteck of Kentucky, Inc. and copies of Plaintiffs' Original Petition and Request for Disclosure and other documents filed with the 389th District Court are attached hereto as Exhibit 2. There have been no further proceedings in Cause No. C-2750-07-H.

2. The above-described action is a civil action over which the United States District Court, for the Southern District of Texas, McAllen Division, has original jurisdiction pursuant to 28 U.S.C. § 1332 (a), on the grounds that there is diversity of citizenship between the parties, and the amount in controversy exceeds Seventy-Five Thousand and No/100 Dollars (\$75,000.00) exclusive of interest and costs, based on information and belief. Specifically, Plaintiffs allege that they are residents of Texas.

3. Defendant Amteck of Texas (hereinafter Amteck Texas) is a Texas Limited Liability Company whose only member is Amteck of Kentucky, Inc. which is incorporated in the state of Kentucky, with its principal place of business in Kentucky, and thus is not a resident of the state of Texas; nor is it domiciled in Texas, but is a citizen of Kentucky for diversity purposes. It is, further, fraudulently or improperly joined, as is set forth in more detail in paragraph 12 and in Exhibit 3, the affidavit of Corey Bard, and therefore, its citizenship does not count in the calculation of diversity citizenship. Subject thereto and without waiver of the foregoing, it consents to this removal, in the event it should be determined to be properly joined.

4. Amteck of Kentucky, Inc. DBA Kentucky Amteck, Inc. (hereinafter Amteck Kentucky) is a Kentucky corporation with its principal place of business in Kentucky. Amteck is thus not a citizen of Texas for the purposes of diversity, but is a citizen of Kentucky.

5. Defendant US Trades, LLC, was served with process through the Secretary of State on December 19, 2007. It is a limited liability company organized under Indiana law. Its only two members, Mike Morris and Tom Harris, are individuals and residents of, and domiciled in Indiana. Thus, US Trades, LLC is not a citizen of Texas for the purposes of diversity, but is a citizen of Indiana. US Trades LLC is joining in or consenting to this removal.

6. The Haskell Company DBA the Haskell Company of Florida (hereinafter the Haskell Company) is a Florida corporation with its principal place of business in Florida. Thus, Haskell is not a citizen of Texas for diversity purposes. The Haskell Company is joining in or consenting to this removal.

7. Defendant Snorkel International, Inc. was incorporated in the state of Delaware, with its principal place of business in Kansas. It is not a citizen of Texas for the purposes of diversity and is consenting to or joining in this petition for removal.

8. The above-described action is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. § 1441 subd. (a) and (c), due to the complete diversity of the parties.

9. The thirty (30) day period within which Defendant is required to file a Notice of Removal has not expired. The first receipt of the petition in this matter was by Defendant Amteck Kentucky, on or about December 18, 2007 when said Defendant received a copy from the court upon request. Service upon Amteck Kentucky was not accomplished until December 28, 2007 when service was completed on the secretary of

state or on January 2, 2008 when Amteck Kentucky actually received a copy of the citation from the secretary of state.

10. Defendant Amteck Texas was served on January 2, 2008 (postmarked December 28, 2007). Defendant Haskell was served on January 2, 2008. The Secretary of State was served on December 19, 2007 on behalf of Defendant Snorkel which was served with copies of the petition on January 2, 2008.

11. Defendant has prepared and will file Notice of this removal with the State Court (Exhibit 4 attached) and has prepared and will serve Notice of this removal on counsel for Plaintiff in this action (Exhibit 5 attached).

12. All parties named as defendants in this matter are diverse from the Plaintiffs as the Plaintiffs have at all times been residents, citizens and domiciliaries of the state of Texas and not of Delaware, Indiana, Florida, Kansas or Kentucky, the states of citizenship of the Defendants named herein. Further, for the purposes of diversity, the citizenship of Amteck Texas should not be considered, because Amteck Texas has been fraudulently or improperly joined in this matter. This matter was previously brought in California in cause number 26-35179, In the Superior Court for the State of California, County of Napa. Amteck Texas was not sued in that lawsuit. There have been no documents or any discovery in the previous lawsuit that indicate that Amteck Texas was in any way involved in the California project upon which the plaintiffs were working at the time of the accident made the basis of this lawsuit. That lawsuit was dismissed by Plaintiffs and this suit was then filed in Texas and Amteck Texas was for the first time

named as a defendant. Attached hereto as Exhibit 3 (incorporated herein by reference) is the affidavit of the controller of both Amteck entities, affirming that only Amteck Kentucky did business in California at all times at issue in this lawsuit. Further, in this lawsuit, there are no specific allegations against Amteck Texas and no specific relief is sought against Amteck Texas.

14. In filing this Notice of Removal, Defendant respectfully reserves the right to present and rely upon all defenses to which it may be entitled including, without limitation, improper service of process, jurisdiction, venue and any other procedural or substantive defenses.

15. All defendants join in this removal or will do so shortly hereafter. Amteck Texas will join subject to its contention that it has been fraudulently joined as it was not present in any way at the site of the accident made the issue in this lawsuit and had no contractual or other legal obligation relating to the job site or job in question in this matter.

WHEREFORE, Defendant Amteck of Kentucky, Inc. respectfully requests that the above-described civil action now pending against it in the 389th District Court of Hidalgo County, Texas, be removed from that Court to this United States District Court for the Southern District of Texas, McAllen Division.

Respectfully submitted,

/s/ Rebecca R. Kieschnick

Rebecca R. Kieschnick

Federal I.D. No. 0352

State Bar No. 21566900

Sandra Sterba-Boatwright

Federal I.D. No. 6857

State Bar No. 19169400

ATTORNEY-IN-CHARGE FOR AMTECK
OF KENTUCKY, INC. DBA KENTUCKY
AMTECK, INC.

OF COUNSEL:

DONNELL, ABERNETHY & KIESCHNICK

555 No. Carancahua, Suite 400

Post Office Box 2624

Corpus Christi, Texas 78403-2624

Telephone No.: (361) 888-5551

Telecopier No.: (361) 880-5618

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been sent via **ELECTRONIC SERVICE OR CERTIFIED U.S. MAIL/RETURN RECEIPT REQUESTED** to counsel listed below on this the 8th day of January, 2008.

Wesley Todd Ball
Michael A. Hawash
1010 Lamar, Suite 1600
Houston, Texas 77002

/s/ Rebecca R. Kieschnick
Rebecca R. Kieschnick

Cases/salinas /defendantsnotice of removal.doc

EXHIBIT 2

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

**REYNALDO SALINAS, ISABEL §
SALINAS, AND JESSICA SALINAS, §
INDIVIDUALLY AND AS §
REPRESENTATIVE OF THE ESTATE §
OF JOSE MARTIN SALINAS §**

PLAINTIFFS §

VS. §

CIVIL ACTION NO. _____

**AMTECK OF TEXAS, AMTECK OF §
KENTUCKY, INC. DBA KENTUCKY §
AMTECK, INC., U.S. TRADES, LLC, §
HASKELL COMPANY DBA THE §
HASKELL COMPANY OF FLORIDA §
SNORKEL INTERNATIONAL, INC. §**

DEFENDANTS §

INDEX OF STATE COURT DOCUMENTS

Index (prepared by counsel)	p.1
Receipt for copies of file	p. 2
Civil Docket Sheet	p. 3
Plaintiffs' Original Petition and Request for Disclosure	pp. 4-15
Receipt for filing fee	p. 16
Correspondence to clerk	pp. 17-18
Citation served on Amteck of Kentucky, Inc. dba Kentucky Amteck Inc.	pp. 19-33

STATE OF TEXAS
COUNTY OF HIDALGO

ANK ACCT: F

RECEIPT NO. 168244

DATE 01/04/08

RECEIVED OF Donnell, Abernethy & Kieschke

PAYMENT METHOD: CK

THIRTY & 00/100 DOLLARS

PAID

JAN 04 2008

HIDALGO COUNTY
DIST. CLERKS

COP. D COPIES	16.00
CERT. CERTIFICATION	2.00
DCOVE Overpayment	12.00

TOTAL CHGS \$ 30.00

Comment: C-2758-07-H 117894

LAURA HINOJOSA
District Clerk
by Hsotuyo

Civil Docket

Court

Case No. C-2750-07-H
HIDALGO CountyJanuary 4th, 2008
1:41pmREYNALDO SALINAS, ET AL. vs. AMTECK OF
TEXAS, ET. AL.

Filed: 11/14/2007

Status: Filed

Type: CIVIL SUIT

Judge

LETICIA LOPEZ

Court Reporter

Date		Volume	Page
Disposition Information			
	Case Disposition:		
Events & Orders of the Court			
11/14/07	PLAINTIFF'S ORIGINAL PETITION		
11/27/07	MANUAL CHECK ISSUED REC#158603 CK#35185 \$12.00 FARRAR & BALL Entered by: LONNIED on 11/27/07 at 01:10pm		
12/10/07	CITATION ISSUED ISSUED TO THE HASKELL COMPANY AND AMTECK OF TEXAS, AND THRU THE SECRETARY OF STATE ISSUED U.S TRADES, LLC, SNORKEL INTERNATIONAL, INC., AND AMTECK OF KENTUCKY, INC. MAILED ALL CITATIONS BACK TO ATTORNEY FOR SERVICE Entered by: SARA on 12/10/07 at 11:13am		
02/14/08	TICKLER		
Fee Payment Information			
	Plaintiff Payments Total Payments: 1 Total Paid : \$254.00		
11/20/07	CK Rcpt # 158603 \$254.00		

DATE **JAN 04 2008**
 A true copy I certify
 LAURA HINOJOSA
 District Clerk, Hidalgo County, Texas
 By *[Signature]* Deputy

AT 9:00 O'CLOCK A M

NOV 14 2007

CAUSE NO. C-2750-07-H

REYNALDO SALINAS, ISABEL
SALINAS, AND JESSICA SALINAS,
INDIVIDUALLY AND AS
REPRESENTATIVE OF THE ESTATE
OF JOSE MARTIN SALINAS
Plaintiff

VS.

AMTECK OF TEXAS, AMTECK OF
KENTUCKY, INC. d.b.a. KENTUCKY
AMTECK, INC., U.S. TRADES, LLC,
HASKELL COMPANY d.b.a. THE
HASKELL COMPANY OF FLORIDA
AND SNORKEL INTERNATIONAL,
INC.

Defendants

IN THE DISTRICT COURT OF

LAURA HINOJOSA, CLERK
District Courts, Hidalgo County
By [Signature] Deputy

HIDALGO COUNTY, TEXAS

389th JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs, REYNALDO SALINAS, ISABEL SALINAS, and JESSICA SALINAS, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF JOSE MARTIN SALINAS, complaining of Defendants, AMTECK OF TEXAS, AMTECK OF KENTUCKY, INC. d.b.a. KENTUCKY AMTECK, INC., U.S. TRADES, LLC, THE HASKELL COMPANY D.B.A. THE HASKELL COMPANY OF FLORIDA, and SNORKEL INTERNATIONAL, INC. and files this Original Petition and for cause of action would respectfully show the following:

I.
DISCOVERY LEVEL

1.1 Plaintiffs intend to conduct discovery in this matter under Level 3 of Rule 190 of the TEXAS RULES OF CIVIL PROCEDURE.

II.
PARTIES

2.1 Plaintiff, REYNALDO SALINAS, is a resident of the State of Texas.

2.2 Plaintiff, ISABEL SALINAS, is a resident of the State of Texas.

2.3 Plaintiff, JESSICA SALINAS, is a resident of the State of Texas.

2.4 Defendant, AMTECK OF TEXAS ("Amteck-Texas"), is a foreign limited liability company who does business in Texas. Amteck-Texas may be served with citation through its registered agent, CT Corporation System, 350 N. St. Paul Street, Dallas, TX 75201.

2.5 Defendant, AMTECK OF KENTUCKY, INC. d.b.a. KENTUCKY AMTECK, INC. ("Amteck-Kentucky"), is a business entity, form unknown. Amteck-Kentucky engages in business in the State of Texas and does not maintain a place of regular business in the State of Texas or a designated agent upon whom service of process may be made for causes of action out of business done in this state. Amteck-Kentucky is required to maintain an agent for service of process. Therefore, pursuant to Section 17.044, Texas Civil Practice and Remedies Code, Defendant AMTECK OF KENTUCKY, INC. d.b.a. KENTUCKY AMTECK, INC. can be served by serving the Secretary of the State of Texas via CMRRR at State Capitol, Capitol Station, Austin, Texas 78711, who shall forward a copy of the petition with citation to AMTECK OF KENTUCKY, INC. d.b.a. KENTUCKY AMTECK, INC. at its home office, 2421 Fortune Dr., Suite 150, Lexington, KY 40509.

2.6 U.S. TRADES, LLC ("US Trades") is a limited liability company that engages in

business in the State of Texas and does not maintain place of regular business in the State of Texas or a designated agent upon whom service of process may be made for causes of action out of business done in this state. US Trades is required to maintain an agent for service of process. Therefore, pursuant to Section 17.044, Texas Civil Practice and Remedies Code, Defendant **U.S. TRADES, LLC** can be served by serving the Secretary of the State of Texas via CMRRR at State Capitol, Capitol Station, Austin, Texas 78711, who shall forward a copy of the petition with citation to **U.S. TRADES, LLC**, at its home office, 1304 Rose Garden Drive, Metairie, LA 70005.

2.7 THE HASKELL COMPANY d.b.a. THE HASKELL COMPANY OF FLORIDA ("Haskell") is a foreign for-profit corporation and may be served with citation through its registered agent, CT Corporation System, 350 N. St. Paul Street, Dallas, TX 75201.

2.8 SNORKEL INTERNATIONAL, INC ("Snorkel") is a corporation that engages in business in the State of Texas and does not maintain place of regular business in the State of Texas or a designated agent upon whom service of process may be made for causes of action out of business done in this state. Snorkel is required to maintain an agent for service of process. Therefore, pursuant to Section 17.044, Texas Civil Practice and Remedies Code, Defendant **Snorkel International, Inc.** can be served by serving the Secretary of the State of Texas via CMRRR at State Capitol, Capitol Station, Austin, Texas 78711, who shall forward a copy of the petition with citation to **Snorkel International**, Attention Todd H. Bartles, 3101 Fredrick Ave., St. Joseph, MO 64506.

III.

VENUE AND JURISDICTION

3.1 Venue is proper and maintainable in Hidalgo County, Texas, under the Texas Civil Practice and Remedies Code as a substantial amount of the events and conditions concerning the lawsuit occurred in Hidalgo County, including but not limited to the Amteck Defendants and U.S. Trades recruiting Plaintiffs, Reynaldo Salinas and Jose Salinas for the subject employment.

3.2 Jurisdiction is proper because the amount in controversy exceeds the minimum jurisdictional limits of this Court.

IV.

BACKGROUND FACTS

4.1 On June 16, 2006, Reynaldo Salinas and Jose Martin Salinas were working on a Snorkel F1930 Lift ("subject scissor lift" or "scissor lift") at a job site in Napa (at a property owned by Foster's Wine Estates) under the supervision and direction of Defendants. The Snorkel Lift was leased to the Amteck Defendants by California High Reach & Equipment Rental, Inc. At the time of the incident, Reynaldo Salinas and Jose Martin Salinas were in the course and scope of their required employment duties for their employer (US Trades). THE HASKELL COMPANY d.b.a. THE HASKELL COMPANY OF FLORIDA was the general contractor at the time of the underlying incident.

4.2 Defendants situated the Snorkel Lift parallel to a bundle of wire. Thereafter, Defendants requested the Salinas Plaintiffs act as a human roller from atop the fully extended lift. The cables were being pulled from within by a mechanical tugger unit. The manner in which they were required to utilize the Snorkel Lift was improper. Through no fault of Plaintiffs, one or all of the cables became logged for reasons now unknown. Once the cables became immovable, the Snorkel Lift was tipped and pulled to the ground as a result of the force which continued to be

applied from below by the tugger unit. Because the lift was not properly positioned, used in a manner for which it was not intended, and the loads exceeded the vertical and horizontal limits, it overturned.

4.3 Defendants each failed to provide proper safety equipment, training, fall protection, helmet, and proper communication devices which would have enabled Reynaldo and Jose to warn of the fall danger. Defendants each failed to properly train, supervise, and provide a safe work site. In addition, Defendants were negligent in the leasing of, and use of, a scissor lift which was not within CAL OSHA and OSHA regulations.

4.4 As a direct and proximate result of the Defendants' negligence, which were themselves the cause of the incident, Reynaldo Salinas sustained serious and permanent debilitating injuries including, but not limited to, a shattered hip, broken leg, ankle and spine. As a direct and proximate result of his injuries, Reynaldo Salinas has suffered loss of past and future earnings, loss of earning capacity, has incurred continuing medical expenses, and has and will suffer physical and emotional pain and suffering. As a direct and proximate result of the Defendants' negligence, which were themselves the cause of the accident, Jose Martin Salinas was killed in this accident.

V.

CAUSE OF ACTION: NEGLIGENCE (THE AMTECK DEFENDANTS AND HASKELL)

5.1 The injuries and damages suffered by the Salinas Plaintiffs were proximately caused by Defendants' negligent acts. Defendants had the right to control the details of Plaintiffs' work and owed a duty to Plaintiffs to use ordinary care. On or before the occasion in question, Defendants committed the following acts and/or omissions of negligence, which were a proximate cause of the injuries sustained by Plaintiff:

- (a) Failing to provide a reasonably safe work place;
- (b) Failing to properly train employees, servants or agents in the safe manner in which to operate the subject scissor lift;
- (c) Failing to provide reasonably safe work equipment and safety equipment;
- (d) Failing to perform an inspection of its activities on a regular basis to detect unsafe operations;
- (e) Failing to furnish reasonably safe instrumentalities;
- (f) Failing to provide adequate safety supervision to avoid dangerous conditions at its premises and in conjunction with the use of the subject scissor lift;
- (g) Failing to follow safety rules and regulations for safe use of the subject scissor lift; and
- (h) Failing to provide the proper and necessary manpower to perform the assigned tasks.

5.2 Each of these acts and/or omissions, singularly or in combination with others, constituted negligence on the part of Defendants which proximately caused the incident and Plaintiffs' injuries and damages, as more fully set forth below.

VI.
CAUSE OF ACTION: PREMISE LIABILITY
(HASKELL)

6.1 The Salinas Plaintiffs were the invitees of Haskell at the time each fell from the subject scissor lift. The Salinas Plaintiffs bring suit against Defendant on the ground of premise liability for the following:

- 1. Haskell knew or reasonably should have known of the danger regarding its premises, specifically, the improperly installed, unreasonably dangerous, and defective scaffolding;

2. Haskell did not provide and ensure the use of protective fall equipment to the Salinas Plaintiffs; and
3. Haskell breached its duty of ordinary care owed to the Salinas Plaintiffs as an invitee in the following manners:
 - a. failing to adequately warn of the defective condition of the scaffolding which gave way and caused his injuries;
 - b. failing to make the defective scaffolding and/or latent defective condition to its premises safe for use; and
 - c. failing to conduct reasonably careful inspection of the premises to discover latent defects.

6.2 Haskell's failure to use care as described above was a producing and proximate cause of the Salinas Plaintiffs injuries and death of Jose Salinas described herein.

VII.

CAUSE OF ACTION - NEGLIGENCE PER SE **(THE AMTECK DEFENDANTS AND HASKELL)**

7.1 Defendants' conduct in providing an unsafe workplace, improper training, instructions, and use of the subject scissor lift and failure to ensure the use of protective fall equipment was negligence per se. Defendant breached a duty imposed by law, including but not limited to Cal-OSHA and OSHA laws and regulations regarding the use and maintenance of the subject scissor lift and the training required for the operation of the subject scissor lift. Defendants' breach caused Plaintiffs' injuries and resulting damages.

VIII.

CAUSE OF ACTION: STRICT LIABILITY **(SNORKEL)**

8.1 At all times material hereto the Snorkel was engaged in the business of manufacturing, assembling, marketing and/or selling aerial lifts to the public and did so with reference to the subject lift bearing at issue herein which is unreasonably dangerous and defective in its design

and as marketed. Snorkel is thus the “manufacturer” of the subject scaffold within the meaning of TEX. CIV. PRAC. & REM. CODE § 82.001(4), and is liable under the doctrine of strict products liability in tort for injuries and damages produced by its defects.

IX.
CAUSE OF ACTION: DEFECTIVE DESIGN
(SNORKEL)

9.1 The design of the subject lift was defective and unreasonably dangerous in that it did not incorporate available components to ensure proper stabilization once fully extended. The lack of these components rendered the subject lift unreasonably dangerous due to its propensity to overturn when fully extended. Likewise, the weight of the basket when fully loaded caused the subject lift to overturn when fully extended. Further, the subject lift was defective due to its inability to sustain, without overturning, normal and foreseeable vertical and horizontal loads which resulted from normal and foreseeable loading once fully extended.

9.2 The defective and unreasonably dangerous design of the subject lift was a producing and proximate cause of the injuries and damages sustained by the Salinas Plaintiffs.

SAFER ALTERNATIVE DESIGN

9.3 A safer alternative design would have prevented or significantly reduced the risk of Plaintiff's injuries and damages, without impairing the subject lift's utility. These alternative designs include, but are not limited to a wider wheel base, alternative weight distribution, outriggers, and vertical locks which would prevent vertical extension unless outriggers were utilized. Furthermore, these safer alternative designs were both economically and technologically feasible at the time the product left control of Defendant by the application of existing or reasonably achievable scientific knowledge.

X.

CAUSE OF ACTION: MARKETING DEFECT
(SNORKEL)

10.1 Both prior to and subsequent to the delivery of the subject lift, Defendant failed to adequately and properly instruct regarding proper use of the subject lift. Defendant failed to give adequate and proper warnings and instructions regarding the dangers of the subject lift. Specifically, Defendant failed to provide accurate information regarding vertical and horizontal loading limits when fully extended. Likewise, Defendant failed to provide proper warnings regarding the placement of the lift (parallel or perpendicular) in relation to materials and/or loads to be applied to the subject lift once fully extended. The failure to give adequate and proper warnings and instructions rendered the subject lift defective and unreasonably dangerous as sold, which was a producing and proximate cause of the injuries and damages sustained by Plaintiffs.

XI.

CAUSE OF ACTION: NEGLIGENCE
(SNORKEL)

11.1 Defendant through acts and/or omissions, negligently designed and marketed, and/or sold the subject lift. At the time the subject lift was marketed and designed and sold, the subject lift was both defective in design and unreasonably dangerous. The negligent acts and/or omissions were a proximate cause of the injuries and damages sustained by Plaintiffs.

XII.

CAUSE OF ACTION: GROSS NEGLIGENCE
(U.S. TRADES, LLC)

12.1 Plaintiffs hereby bring this suit against US Trades under section 408.001(b) of the Texas Labor Code.

XIII.
WRONGFUL DEATH
(ALL DEFENDANTS)

13.1 Plaintiff, JESSICA SALINAS, brings this action as the surviving spouse of Decedent, JOSE MARTIN SALINAS. This action is brought by Plaintiff pursuant to Section 71.002-004 of the TEXAS CIVIL PRACTICES AND REMEDIES CODE, and pursuant to the terms and provisions of Section 71.021 of the TEXAS CIVIL PRACTICES AND REMEDIES CODE. This action is also brought under and pursuant to any and all other laws and legal entitlements, including but not limited to, Texas common law.

13.2 Plaintiff, JESSICA SALINAS is the heir and statutory beneficiary of Decedent, JOSE MARTIN SALINAS.

XIV.
GENERAL DAMAGES
(All Defendants)

14.1 REYNALDO SALINAS incurred injuries, both physical and emotional, as a factual and proximate result of this accident, and thus is eligible for compensation in the form of damages by those at fault. ISABEL SALINAS has suffered, and will continue to suffer the loss of her husband's consortium, including but not limited to the loss of care, comfort, society, and love, and the loss of contribution and support.

14.2 Decedent, JOSE MARTIN SALINAS also incurred damages. These damages arose between the time of injury and the time of death. The Decedent is represented by his wife, who seeks recovery of damages on behalf of the Decedent's estate.

14.3 Plaintiff, JESSICA SALINAS, as heir or successor in interest of the Decedent, JOSE MARTIN SALINAS, seeks recovery of damages due to loss she herself incurred as a result of the Decedent's death. JESSICA SALINAS has suffered, and will continue to suffer the loss of

her husband's consortium, including but not limited to the loss of care, comfort, society, and love, and the loss of contribution and support.

14.4 Plaintiffs' damages include, but are not limited to, physical pain, mental anguish, limitation of activities, lost wages, and loss of earnings capacity. In reasonable probability, Plaintiffs will continue to suffer these damages and injuries in the future. Further, because of the nature and severity of the injuries he sustained, Plaintiff, REYNALDO SALINAS has required medical treatment in the past and, in reasonable probability, will require other and additional treatment in the future. Charges for such medical treatment that have been made in the past and those which will in reasonable probability be made in the future have been and will be reasonable charges made necessary by the occurrence in question.

XV.
EXEMPLARY DAMAGES
(All Defendants)

15.1 Plaintiffs seek exemplary damages caused by Defendants' malice, gross negligence and willful acts, omissions and gross negligence. Exemplary damages are sought under Section 41.003(a)(2) of the TEXAS CIVIL PRACTICES AND REMEDIES CODE, as defined by Section 41.001(7).

XVI.
PRE AND POST-JUDGMENT INTEREST
(All Defendants)

16.1 Plaintiffs would additionally say and show they are entitled to recovery of pre-judgment and post-judgment interest in accordance with law and equity as part of their damages herein, and Plaintiffs here and now sue for recovery of pre-judgment and post-judgment interest as provided by law and equity, under the applicable provision of the laws of the State of Texas.

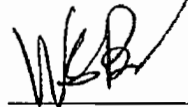
XVII.
REQUEST FOR DISCLOSURE
(ALL DEFENDANTS)

17.1 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose the information and material described in Rule 194.2 within fifty (50) days of the service of this request.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer and that, upon final trial hereof, Plaintiffs have judgment against Defendants, jointly and severally, that they recover their damages in accordance with the evidence, that they recover costs of Court herein expended, that they recover interest, both pre- and post-judgment to which they are entitled under the law, and for such other and further relief, both general and special, legal and equitable, to which they may be justly entitled.

Respectfully submitted,

FARRAR & BALL, L.L.P.



WESLEY TODD BALL

State Bar No. 24038754

Michael A. Hawash

State Bar No. 00792061

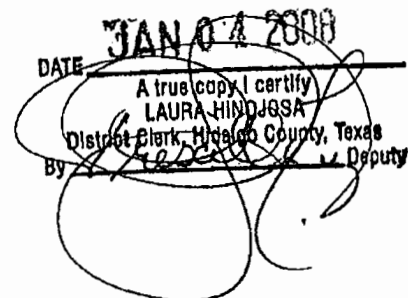
1010 Lamar, Suite 1600

Houston, Texas 77002

Telephone: 713.221.8300

Telecopier: 713.221.8301

ATTORNEYS FOR PLAINTIFFS



STATE OF TEXAS
COUNTY OF HIDALGO

BANK ACCT: F

RECEIPT NO. 158603

DATE 11/20/07

RECEIVED OF Farrar & Ball

PAYMENT METHOD: CK

TWO HUNDRED FIFTY FOUR & 00/100 DOLLARS

C-2750-07-H

CLERK Civil New Filing Fee	50.00
SJFS. JUDICIAL SUPPORT FEE	37.00
CLERK CLERKS FEE	50.00
LIB.D LIBRARY FEE	30.00
STENO STENO (GEN DENIAL)	15.00
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DRM.D District Records Mgt	5.00
AJSF APPELLATE JUDICIAL SYSTEM	5.00
CIT.D CITATION	40.00
DCOVE Overpayment	12.00

PAID
NOV 20 2007
HIDALGO COUNTY
D.S. CLERKS

=====

TOTAL CHGS \$ 254.00

Comment: 2804

LAURA HINOJOSA
District Clerk
by Msotuyo



FILED
AT _____ O'CLOCK _____ M

NOV 14 2007

LAURA HINOJOSA, CLERK
District Courts, Hidalgo County
By _____ Deputy

November 13, 2007

Via Overnight Delivery

Hidalgo County District Clerk
Hidalgo County Courthouse
100 N. Closner Blvd.
Edinburg, TX 78539

Re: Cause No. C-2750-07-4; Reynaldo Salinas, et al v. Amteck of Texas, et al; in the _____
Judicial District of Hidalgo County, Texas

Dear Sir/Madame:

Enclosed please find the following:

- the original and 9 copies of *Plaintiffs' Original Petition*; and
- a firm check in the amount of \$254.00 to cover the filing fee and preparation fee for the citations.

Please issue citations on the Defendants as follows: AMTECK OF TEXAS; THE HASKELL COMPANY d.b.a. THE HASKELL COMPANY OF FLORIDA; AMTECK OF KENTUCKY, INC. d.b.a. KENTUCKY AMTECK, INC. (through the Texas Secretary of State), U.S. TRADES, LLC (through the Texas Secretary of State), and SNORKEL INTERNATIONAL, INC. (through the Texas Secretary of State).

Please return all the citations, along with our file-stamped copy of the petition via overnight delivery. I have enclosed a Federal Express ticket for your convenience.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Darla K. Wallace'.

Darla K. Wallace
Paralegal to Wesley T. Ball

/dkw
Enclosures

FedEx | Ship Manager | Label 792597816626

Page 1 of 1

From: Origin ID: EXA (713)224-8800
 Shaina Voorhes
 Farrar & Ball LLP
 1010 Lamar
 Suite 1600
 Houston, TX 77002

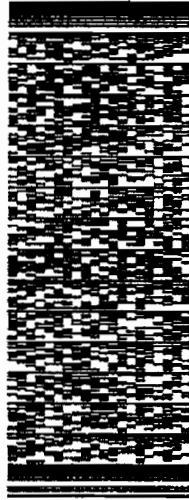


CL 8866272103

SHIP TO: (956)318-2660
 District Clerk
 Hidalgo County
 100 N CLOSNER BLVD

BILL SENDER

EDINBURG, TX 785393523



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 Account#: S *****

Delivery Address Bar Code



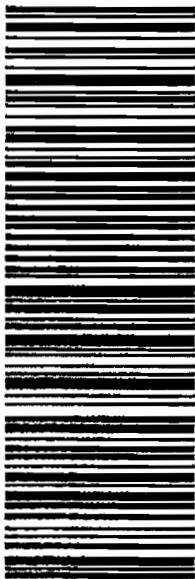
Ref # Salinas
 Invoice #
 PO #
 Dept #

TRK# 7925 9781 6626
 0201

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2. Fold the printed page along the horizontal line.
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Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com.

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

The State of Texas



Citations Unit
P.O. Box 12079
Austin, Texas 78711-2079

Phone: 512-463-5560
Fax: 512-463-0873
TTY (800) 735-2989
www.sos.state.tx.us

Secretary of State

December 27, 2007

Amteck Of Kentucky Inc dba Kentucky Amteck
Inc
2421 Fortune Dr
Suite 150
Lexington, KY 40509

2008-144476-2

Include reference number in
all correspondence

RE: Reynaldo Salinas et al Vs Amteck of Texas et al
389th Judicial District Court of Hidalgo County, Texas
Cause No: C275007H

Dear Sir/Madam,

Pursuant to the Laws of Texas, we forward herewith by CERTIFIED MAIL, return receipt requested, a copy of process received by the Secretary of State of the State of Texas on December 19, 2007.

CERTIFIED MAIL #71603901984976966021

Refer correspondence to:

Wesley Todd Ball
Farrar & Ball LLP Trial Attorneys
1010 Lamar
Suite 1600
Houston, TX 77002

Sincerely,

A handwritten signature in cursive script that reads "Helen Lupercio".

Helen Lupercio
Team Leader, Citations Unit
Statutory Documents Section

hl/vo
Enclosure

C-2750-07-H

COPY

DISTRICT COURT, HIDALGO COUNTY, TEXAS 389TH JUDICIAL DISTRICT COURT OF TEXAS

CITATION

REYNALDO SALINAS, ET.AL.

VS

AMTECK OF TEXAS, ET. AL.

THE STATE OF TEXAS

NOTICE TO DEFENDANT: You have been sued, You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 o'clock a.m. on the Monday next following the expiration of twenty (20) days after you were served with this citation and petition, a default judgment may be taken against you.

TO: SECRETARY OF STATE
P.O. BOX 12079
AUSTIN, TEXAS 78711

In turn to serve: AMTECK OF KENTUCKY, INC.
d/b/a KENTUCKY AMTECK, INC.
2421 Fortune Dr., Suite 150
Lexington, KY 40509

You are hereby commanded to appear by filing a written answer to the PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE on or before 10:00 o'clock a.m. on the Monday next after the expiration of twenty (20) days after the date of service hereof, before the Honorable 389th District Court of Hidalgo County, Texas at the Courthouse at 100 N. Closner, Edinburg, Texas 78539.

Said Petition was file on the 10th day of December , 2007 , and a copy of same accompanies this citation.

The file number and style of said suit being No. C-2750-07-H
REYNALDO SALINAS, ET. AL.
VS
AMTECK OF TEXAS, ET. AL.


Said Petition was filed in said court by WESLEY TODD BALL, ATTORNEY AT LAW
address: 1010 Lamar, Suite 1600, Houston, Texas 77002

The nature of the demand is fully shown by a true and correct copy of the petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and Given under my hand and seal of said Court, at Edinburg, Texas this the 10th day of December, 2007 .

LAURA HINOJOSA, DISTRICT CLERK
HIDALGO COUNTY, TEXAS


Deputy Clerk

RECEIVED
SECRETARY OF STATE

DEC 19 2007

9:30 AM
CITATIONS UNIT

144476 -2

OFFICER'S RETURN

Came to hand on the _____ day of _____, 2007 at _____ o'clock ____, M. and executed in Hidalgo County, Texas by delivering to each of the within named defendants in person, a true copy of this citation, upon which I endorsed the date of delivery to said defendant together with the accompanying copy of the Plaintiffs' Original Petition and Request for Discoloure at the following times and places, to - wit:

 Name: _____ : Date: _____ : Time: _____ : Place: _____

and not executed as to the defendant, _____

the diligence used in finding said defendant, being: _____

and the cause of failure to execute this process is : _____

and the information received as to the whereabouts of said defendant, being: _____

_____, I actually and necessarily traveled _____ miles in the service of

this citation, in addition to any other mileage I may have traveled in the service of other process in the same case during the same trip.

FEES: serving copy (s). \$ _____

Mileage \$ _____

By: _____
 DEPUTY

FILED

AT _____ O'CLOCK _____ M

CAUSE NO 6-2250-07-H

NOV 14 2007

REYNALDO SALINAS, ISABEL
SALINAS, AND JESSICA SALINAS,
INDIVIDUALLY AND AS
REPRESENTATIVE OF THE ESTATE
OF JOSE MARTIN SALINAS
Plaintiff

IN THE DISTRICT COURT OF NO. 10, CLERK
District Courts, Hidalgo County
By _____ Deputy

VS.

HIDALGO COUNTY, TEXAS

AMTECK OF TEXAS, AMTECK OF
KENTUCKY, INC. d.b.a. KENTUCKY
AMTECK, INC., U.S. TRADES, LLC,
HASKELL COMPANY d.b.a. THE
HASKELL COMPANY OF FLORIDA
AND SNORKEL INTERNATIONAL,
INC.

589 JUDICIAL DISTRICT

Defendants

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs, REYNALDO SALINAS, ISABEL SALINAS, and JESSICA SALINAS, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF JOSE MARTIN SALINAS, complaining of Defendants, AMTECK OF TEXAS, AMTECK OF KENTUCKY, INC. d.b.a. KENTUCKY AMTECK, INC., U.S. TRADES, LLC, THE HASKELL COMPANY D.B.A. THE HASKELL COMPANY OF FLORIDA, and SNORKEL INTERNATIONAL, INC. and files this Original Petition and for cause of action would respectfully show the following:

I.
DISCOVERY LEVEL

1.1 Plaintiffs intend to conduct discovery in this matter under Level 3 of Rule 190 of the TEXAS RULES OF CIVIL PROCEDURE.

II.
PARTIES

2.1 Plaintiff, REYNALDO SALINAS, is a resident of the State of Texas.

2.2 Plaintiff, ISABEL SALINAS, is a resident of the State of Texas.

2.3 Plaintiff, JESSICA SALINAS, is a resident of the State of Texas.

2.4 Defendant, AMTECK OF TEXAS ("Amteck-Texas"), is a foreign limited liability company who does business in Texas. Amteck-Texas may be served with citation through its registered agent, CT Corporation System, 350 N. St. Paul Street, Dallas, TX 75201.

2.5 Defendant, AMTECK OF KENTUCKY, INC. d.b.a. KENTUCKY AMTECK, INC. ("Amteck-Kentucky"), is a business entity, form unknown. Amteck-Kentucky engages in business in the State of Texas and does not maintain a place of regular business in the State of Texas or a designated agent upon whom service of process may be made for causes of action out of business done in this state. Amteck-Kentucky is required to maintain an agent for service of process. Therefore, pursuant to Section 17.044, Texas Civil Practice and Remedies Code, Defendant AMTECK OF KENTUCKY, INC. d.b.a. KENTUCKY AMTECK, INC. can be served by serving the Secretary of the State of Texas via CMRRR at State Capitol, Capitol Station, Austin, Texas 78711, who shall forward a copy of the petition with citation to AMTECK OF KENTUCKY, INC. d.b.a. KENTUCKY AMTECK, INC. at its home office, 2421 Fortune Dr., Suite 150, Lexington, KY 40509.

2.6 U.S. TRADES, LLC ("US Trades") is a limited liability company that engages in

business in the State of Texas and does not maintain place of regular business in the State of Texas or a designated agent upon whom service of process may be made for causes of action out of business done in this state. US Trades is required to maintain an agent for service of process. Therefore, pursuant to Section 17.044, Texas Civil Practice and Remedies Code, Defendant U.S. TRADES, LLC can be served by serving the Secretary of the State of Texas via CMRRR at State Capitol, Capitol Station, Austin, Texas 78711, who shall forward a copy of the petition with citation to U.S. TRADES, LLC, at its home office, 1304 Rose Garden Drive, Metairie, LA 70005.

2.7 THE HASKELL COMPANY d.b.a. THE HASKELL COMPANY OF FLORIDA ("Haskell") is a foreign for-profit corporation and may be served with citation through its registered agent, CT Corporation System, 350 N. St. Paul Street, Dallas, TX 75201.

2.8 SNORKEL INTERNATIONAL, INC ("Snorkel") is a corporation that engages in business in the State of Texas and does not maintain place of regular business in the State of Texas or a designated agent upon whom service of process may be made for causes of action out of business done in this state. Snorkel is required to maintain an agent for service of process. Therefore, pursuant to Section 17.044, Texas Civil Practice and Remedies Code, Defendant Snorkel International, Inc. can be served by serving the Secretary of the State of Texas via CMRRR at State Capitol, Capitol Station, Austin, Texas 78711, who shall forward a copy of the petition with citation to Snorkel International, Attention Todd H. Bartles, 3101 Fredrick Ave., St. Joseph, MO 64506.

III.

VENUE AND JURISDICTION

3.1 Venue is proper and maintainable in Hidalgo County, Texas, under the Texas Civil Practice and Remedies Code as a substantial amount of the events and conditions concerning the lawsuit occurred in Hidalgo County, including but not limited to the Amteck Defendants and U.S. Trades recruiting Plaintiffs, Reynaldo Salinas and Jose Salinas for the subject employment.

3.2 Jurisdiction is proper because the amount in controversy exceeds the minimum jurisdictional limits of this Court.

IV.

BACKGROUND FACTS

4.1 On June 16, 2006, Reynaldo Salinas and Jose Martin Salinas were working on a Snorkel F1930 Lift ("subject scissor lift" or "scissor lift") at a job site in Napa (at a property owned by Foster's Wine Estates) under the supervision and direction of Defendants. The Snorkel Lift was leased to the Amteck Defendants by California High Reach & Equipment Rental, Inc. At the time of the incident, Reynaldo Salinas and Jose Martin Salinas were in the course and scope of their required employment duties for their employer (US Trades). THE HASKELL COMPANY d.b.a. THE HASKELL COMPANY OF FLORIDA was the general contractor at the time of the underlying incident.

4.2 Defendants situated the Snorkel Lift parallel to a bundle of wire. Thereafter, Defendants requested the Salinas Plaintiffs act as a human roller from atop the fully extended lift. The cables were being pulled from within by a mechanical tugger unit. The manner in which they were required to utilize the Snorkel Lift was improper. Through no fault of Plaintiffs, one or all of the cables became logged for reasons now unknown. Once the cables became immovable, the Snorkel Lift was tipped and pulled to the ground as a result of the force which continued to be

applied from below by the tugger unit. Because the lift was not properly positioned, used in a manner for which it was not intended, and the loads exceeded the vertical and horizontal limits, it overturned.

4.3 Defendants each failed to provide proper safety equipment, training, fall protection, helmet, and proper communication devices which would have enabled Reynaldo and Jose to warn of the fall danger. Defendants each failed to properly train, supervise, and provide a safe work site. In addition, Defendants were negligent in the leasing of, and use of, a scissor lift which was not within CAL OSHA and OSHA regulations.

4.4 As a direct and proximate result of the Defendants' negligence, which were themselves the cause of the incident, Reynaldo Salinas sustained serious and permanent debilitating injuries including, but not limited to, a shattered hip, broken leg, ankle and spine. As a direct and proximate result of his injuries, Reynaldo Salinas has suffered loss of past and future earnings, loss of earning capacity, has incurred continuing medical expenses, and has and will suffer physical and emotional pain and suffering. As a direct and proximate result of the Defendants' negligence, which were themselves the cause of the accident, Jose Martin Salinas was killed in this accident.

V.

CAUSE OF ACTION: NEGLIGENCE
(THE AMTECK DEFENDANTS AND HASKELL)

5.1 The injuries and damages suffered by the Salinas Plaintiffs were proximately caused by Defendants' negligent acts. Defendants had the right to control the details of Plaintiffs' work and owed a duty to Plaintiffs to use ordinary care. On or before the occasion in question, Defendants committed the following acts and/or omissions of negligence, which were a proximate cause of the injuries sustained by Plaintiff:

- (a) Failing to provide a reasonably safe work place;
- (b) Failing to properly train employees, servants or agents in the safe manner in which to operate the subject scissor lift;
- (c) Failing to provide reasonably safe work equipment and safety equipment;
- (d) Failing to perform an inspection of its activities on a regular basis to detect unsafe operations;
- (e) Failing to furnish reasonably safe instrumentalities;
- (f) Failing to provide adequate safety supervision to avoid dangerous conditions at its premises and in conjunction with the use of the subject scissor lift;
- (g) Failing to follow safety rules and regulations for safe use of the subject scissor lift; and
- (h) Failing to provide the proper and necessary manpower to perform the assigned tasks.

5.2 Each of these acts and/or omissions, singularly or in combination with others, constituted negligence on the part of Defendants which proximately caused the incident and Plaintiffs' injuries and damages, as more fully set forth below.

VI.
CAUSE OF ACTION: PREMISE LIABILITY
(HASKELL)

6.1 The Salinas Plaintiffs were the invitees of Haskell at the time each fell from the subject scissor lift. The Salinas Plaintiffs bring suit against Defendant on the ground of premise liability for the following:

1. Haskell knew or reasonably should have known of the danger regarding its premises, specifically, the improperly installed, unreasonably dangerous, and defective scaffolding;

2. Haskell did not provide and ensure the use of protective fall equipment to the Salinas Plaintiffs; and
3. Haskell breached its duty of ordinary care owed to the Salinas Plaintiffs as an invitee in the following manners:
 - a. failing to adequately warn of the defective condition of the scaffolding which gave way and caused his injuries;
 - b. failing to make the defective scaffolding and/or latent defective condition to its premises safe for use; and
 - c. failing to conduct reasonably careful inspection of the premises to discover latent defects.

6.2 Haskell's failure to use care as described above was a producing and proximate cause of the Salinas Plaintiffs injuries and death of Jose Salinas described herein.

VII.
CAUSE OF ACTION - NEGLIGENCE PER SE
(THE AMTECK DEFENDANTS AND HASKELL)

7.1 Defendants' conduct in providing an unsafe workplace, improper training, instructions, and use of the subject scissor lift and failure to ensure the use of protective fall equipment was negligence per se. Defendant breached a duty imposed by law, including but not limited to Cal-OSHA and OSHA laws and regulations regarding the use and maintenance of the subject scissor lift and the training required for the operation of the subject scissor lift. Defendants' breach caused Plaintiffs' injuries and resulting damages.

VIII.
CAUSE OF ACTION: STRICT LIABILITY
(SNORKEL)

8.1 At all times material hereto the Snorkel was engaged in the business of manufacturing, assembling, marketing and/or selling aerial lifts to the public and did so with reference to the subject lift bearing at issue herein which is unreasonably dangerous and defective in its design

and as marketed. Snorkel is thus the "manufacturer" of the subject scaffold within the meaning of TEX. CIV. PRAC. & REM. CODE § 82.001(4), and is liable under the doctrine of strict products liability in tort for injuries and damages produced by its defects.

IX.
CAUSE OF ACTION: DEFECTIVE DESIGN
(SNORKEL)

9.1 The design of the subject lift was defective and unreasonably dangerous in that it did not incorporate available components to ensure proper stabilization once fully extended. The lack of these components rendered the subject lift unreasonably dangerous due to its propensity to overturn when fully extended. Likewise, the weight of the basket when fully loaded caused the subject lift to overturn when fully extended. Further, the subject lift was defective due to its inability to sustain, without overturning, normal and foreseeable vertical and horizontal loads which resulted from normal and foreseeable loading once fully extended.

9.2 The defective and unreasonably dangerous design of the subject lift was a producing and proximate cause of the injuries and damages sustained by the Salinas Plaintiffs.

SAFER ALTERNATIVE DESIGN

9.3 A safer alternative design would have prevented or significantly reduced the risk of Plaintiff's injuries and damages, without impairing the subject lift's utility. These alternative designs include, but are not limited to a wider wheel base, alternative weight distribution, outriggers, and vertical locks which would prevent vertical extension unless outriggers were utilized. Furthermore, these safer alternative designs were both economically and technologically feasible at the time the product left control of Defendant by the application of existing or reasonably achievable scientific knowledge.

X.

CAUSE OF ACTION: MARKETING DEFECT
(SNORKEL)

10.1 Both prior to and subsequent to the delivery of the subject lift, Defendant failed to adequately and properly instruct regarding proper use of the subject lift. Defendant failed to give adequate and proper warnings and instructions regarding the dangers of the subject lift. Specifically, Defendant failed to provide accurate information regarding vertical and horizontal loading limits when fully extended. Likewise, Defendant failed to provide proper warnings regarding the placement of the lift (parallel or perpendicular) in relation to materials and/or loads to be applied to the subject lift once fully extended. The failure to give adequate and proper warnings and instructions rendered the subject lift defective and unreasonably dangerous as sold, which was a producing and proximate cause of the injuries and damages sustained by Plaintiffs.

XI.

CAUSE OF ACTION: NEGLIGENCE
(SNORKEL)

11.1 Defendant through acts and/or omissions, negligently designed and marketed, and/or sold the subject lift. At the time the subject lift was marketed and designed and sold, the subject lift was both defective in design and unreasonably dangerous. The negligent acts and/or omissions were a proximate cause of the injuries and damages sustained by Plaintiffs.

XII.

CAUSE OF ACTION: GROSS NEGLIGENCE
(U.S. TRADES, LLC)

12.1 Plaintiffs hereby bring this suit against US Trades under section 408.001(b) of the Texas Labor Code.

XIII.
WRONGFUL DEATH
(ALL DEFENDANTS)

13.1 Plaintiff, JESSICA SALINAS, brings this action as the surviving spouse of Decedent, JOSE MARTIN SALINAS. This action is brought by Plaintiff pursuant to Section 71.002-004 of the TEXAS CIVIL PRACTICES AND REMEDIES CODE, and pursuant to the terms and provisions of Section 71.021 of the TEXAS CIVIL PRACTICES AND REMEDIES CODE. This action is also brought under and pursuant to any and all other laws and legal entitlements, including but not limited to, Texas common law.

13.2 Plaintiff, JESSICA SALINAS is the heir and statutory beneficiary of Decedent, JOSE MARTIN SALINAS.

XIV.
GENERAL DAMAGES
(All Defendants)

14.1 REYNALDO SALINAS incurred injuries, both physical and emotional, as a factual and proximate result of this accident, and thus is eligible for compensation in the form of damages by those at fault. ISABEL SALINAS has suffered, and will continue to suffer the loss of her husband's consortium, including but not limited to the loss of care, comfort, society, and love, and the loss of contribution and support.

14.2 Decedent, JOSE MARTIN SALINAS also incurred damages. These damages arose between the time of injury and the time of death. The Decedent is represented by his wife, who seeks recovery of damages on behalf of the Decedent's estate.

14.3 Plaintiff, JESSICA SALINAS, as heir or successor in interest of the Decedent, JOSE MARTIN SALINAS, seeks recovery of damages due to loss she herself incurred as a result of the Decedent's death. JESSICA SALINAS has suffered, and will continue to suffer the loss of

her husband's consortium, including but not limited to the loss of care, comfort, society, and love, and the loss of contribution and support.

14.4 Plaintiffs' damages include, but are not limited to, physical pain, mental anguish, limitation of activities, lost wages, and loss of earnings capacity. In reasonable probability, Plaintiffs will continue to suffer these damages and injuries in the future. Further, because of the nature and severity of the injuries he sustained, Plaintiff, REYNALDO SALINAS has required medical treatment in the past and, in reasonable probability, will require other and additional treatment in the future. Charges for such medical treatment that have been made in the past and those which will in reasonable probability be made in the future have been and will be reasonable charges made necessary by the occurrence in question.

XV.

EXEMPLARY DAMAGES
(All Defendants)

15.1 Plaintiffs seek exemplary damages caused by Defendants' malice, gross negligence and willful acts, omissions and gross negligence. Exemplary damages are sought under Section 41.003(a)(2) of the TEXAS CIVIL PRACTICES AND REMEDIES CODE, as defined by Section 41.001(7).

XVI.

PRE AND POST-JUDGMENT INTEREST
(All Defendants)

16.1 Plaintiffs would additionally say and show they are entitled to recovery of pre-judgment and post-judgment interest in accordance with law and equity as part of their damages herein, and Plaintiffs here and now sue for recovery of pre-judgment and post-judgment interest as provided by law and equity, under the applicable provision of the laws of the State of Texas.

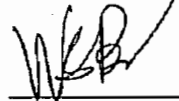
XVII.
REQUEST FOR DISCLOSURE
(ALL DEFENDANTS)

17.1 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose the information and material described in Rule 194.2 within fifty (50) days of the service of this request.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer and that, upon final trial hereof, Plaintiffs have judgment against Defendants, jointly and severally, that they recover their damages in accordance with the evidence, that they recover costs of Court herein expended, that they recover interest, both pre- and post-judgment to which they are entitled under the law, and for such other and further relief, both general and special, legal and equitable, to which they may be justly entitled.

Respectfully submitted,

FARRAR & BALL, L.L.P.



WESLEY TODD BALL

State Bar No. 24038754

Michael A. Hawash

State Bar No. 00792061

1010 Lamar, Suite 1600

Houston, Texas 77002

Telephone: 713.221.8300

Telecopier: 713.221.8301

ATTORNEYS FOR PLAINTIFFS

EXHIBIT 3

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AFFIDAVIT OF COREY BARD

STATE OF KENTUCKY §
§
COUNTY OF FAYETTE §

BEFORE ME, the undersigned notary public, on this day personally appeared
COREY BARD, who being by me duly sworn on his oath states:

“My name is Corey Bard. I am the Controller for two companies: Amteck of Texas, LLC, a Texas limited liability company, and Amteck of Kentucky, Inc. I have held these positions since 2005. As such, I have personal knowledge of the facts stated herein.”

“Amteck of Kentucky, Inc. is an electrical contractor. It works in various parts of the country on jobs for which it bids. It participated in the Fosters Bottling project in California in the summer of 2006 at issue in this lawsuit. Amteck of Texas, LLC, however, has only been in existence since 2005. It has only operated on one work site in San Antonio, Texas. It has only had one employee, who was located in Texas, and has not functioned in construction since February 2006. It had no presence on the Fosters Bottling construction site, either in the form of property or personnel. It never employed the plaintiffs in this matter. It had no contractual relationship with Fosters Bottling or any party out on that project. It had nothing to do with the Fosters Bottling project and did not provide support of any type to the project.”

“Amteck of Kentucky, Inc., however, did work on the Fosters Bottling project, did have personnel on the project. The Salinas employees provided by US Trades, who are Plaintiffs in this lawsuit, were provided to Amteck of Kentucky, Inc., not to Amteck of

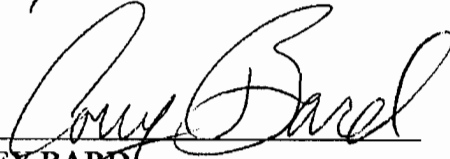
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Texas, LLC. Amteck of Kentucky, Inc. bid for the Fosters Bottling project and was awarded the bid by Haskell Company. Amteck of Kentucky, Inc. was the only Amteck Company on the Fosters Bottling site.”

“I have seen no documents related to the Fosters Bottling project with Amteck of Texas, LLC’s name on them, other than the Original Petition in this lawsuit, and do not know of any.”

Further affiant sayeth not.

SIGNED this the 7th day of January, 2008.


COREY BARD

SWORN AND SUBSCRIBED BEFORE ME on this the 7th day of
January, 2008

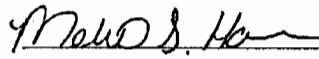

Notary Public, State of Kentucky

Exhibit 4

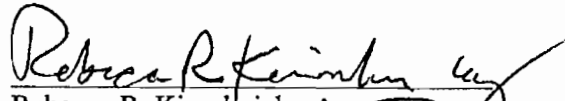
CAUSE NO. C-2750-07-H

REYNALDO SALINAS, ISABEL	§	IN THE DISTRICT COURT OF
SALINAS, AND JESSICA SALINAS,	§	
INDIVIDUALLY AND AS	§	
REPRESENTATIVE OF THE ESTATE	§	
OF JOSE MARTIN SALINAS	§	
	§	
PLAINTIFFS	§	
	§	
VS.	§	HIDALGO COUNTY, TEXAS
	§	
AMTECK OF TEXAS, AMTECK OF	§	
KENTUCKY, INC. DBA KENTUCKY	§	
AMTECK, INC., U.S. TRADES, LLC,	§	
HASKELL COMPANY DBA THE	§	
HASKELL COMPANY OF FLORIDA	§	
SNORKEL INTERNATIONAL, INC.	§	
	§	389 TH JUDICIAL DISTRICT
DEFENDANTS	§	

NOTICE TO STATE COURT OF REMOVAL

PLEASE TAKE NOTICE that Defendant has filed its Notice of Removal in the United States District Court for the Southern District of Texas, McAllen Division, for removal of the action commenced by Plaintiffs in the 389th District Court of Hidalgo County, Texas.

Respectfully submitted,



Rebecca R. Kieschnick
Federal I.D. No. 0352
State Bar No. 21566900
Sandra Sterba-Boatwright
Federal I.D. No. 6857
State Bar No. 19169400

ATTORNEY-IN-CHARGE FOR
DEFENDANT AMTECK OF
KENTUCKY, INC. DBA KENTUCKY
AMTECK, INC.

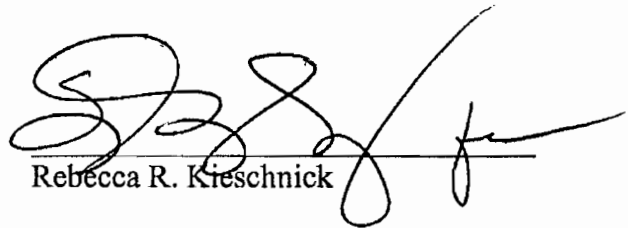
OF COUNSEL:

DONNELL, ABERNETHY & KIESCHNICK
555 No. Carancahua, Suite 400
Post Office Box 2624
Corpus Christi, Texas 78403-2624
Telephone No.: (361) 888-5551
Telecopier No.: (361) 880-5618

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been sent via **CERTIFIED U.S. MAIL/RETURN RECEIPT REQUESTED** to counsel listed below on this the 8 day of January 2008.

Wesley Todd Ball
Michael A. Hawash
1010 Lamar, Suite 1600
Houston, Texas 77002



Rebecca R. Kieschnick

Exhibit 5

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

**REYNALDO SALINAS, ISABEL §
SALINAS, AND JESSICA SALINAS, §
INDIVIDUALLY AND AS §
REPRESENTATIVE OF THE ESTATE §
OF JOSE MARTIN SALINAS §**

PLAINTIFFS

VS.

CIVIL ACTION NO. 7:08-cv-00003

**AMTECK OF TEXAS, AMTECK OF §
KENTUCKY, INC. DBA KENTUCKY §
AMTECK, INC., U.S. TRADES, LLC, §
HASKELL COMPANY DBA THE §
HASKELL COMPANY OF FLORIDA §
SNORKEL INTERNATIONAL, INC. §**

DEFENDANTS

NOTICE TO PLAINTIFFS OF REMOVAL

TO: Plaintiffs and their attorneys, Wesley Todd Ball and Michael A. Hawash, 1010 Lamar, Suite 1600, Houston, Texas 77002:

PLEASE TAKE NOTICE that Defendant has filed its Notice of Removal in the United States District Court for the Southern District of Texas, McAllen Division, for removal of the action commenced by Plaintiffs in the 389th District Court of Hidalgo County, Texas.

A copy of the Notice of Removal is attached hereto and herewith served upon you.

Respectfully submitted,

/r/ Rebecca R. Kieschnick
Rebecca R. Kieschnick
Federal I.D. No. 0352
State Bar No. 21566900
Sandra Sterba-Boatwright
Federal I.D. No. 6857
State Bar No. 19169400

ATTORNEY-IN-CHARGE FOR
DEFENDANT AMTECK OF
KENTUCKY, INC. DBA KENTUCKY
AMTECK, INC.

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been sent via **ELECTRONIC NOTICE AND/OR CERTIFIED U.S. MAIL/RETURN RECEIPT REQUESTED** to counsel listed below on this the 8th day of January, 2008.

Wesley Todd Ball
Michael A. Hawash
1010 Lamar, Suite 1600
Houston, Texas 77002

/s/ Rebecca R. Kieschnick
Rebecca R. Kieschnick

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

**REYNALDO SALINAS, ISABEL §
SALINAS, AND JESSICA SALINAS, §
INDIVIDUALLY AND AS §
REPRESENTATIVE OF THE ESTATE §
OF JOSE MARTIN SALINAS §**

PLAINTIFFS §

VS. §

CIVIL ACTION NO. 7:08-cv00003

**AMTECK OF TEXAS, AMTECK OF §
KENTUCKY, INC. DBA KENTUCKY §
AMTECK, INC., U.S. TRADES, LLC, §
HASKELL COMPANY DBA THE §
HASKELL COMPANY OF FLORIDA §
SNORKEL INTERNATIONAL, INC. §**

DEFENDANTS §

INDEX OF DOCUMENTS FILED

1. Defendants Amteck of Texas, Amteck of Kentucky, Inc. d/b/a Kentucky Amteck, Inc.'s Notice of Removal with copies of pertinent State Court pleadings as follows:
 2. State court documents
 - a) Index of Documents (not part of state court file)
 - b) Receipt for copies of file;
 - c) Civil Docket Sheet
 - d) Plaintiffs' Original Petition and Request for Disclosure
 - e) Receipt for filing fee
 - f) Correspondence to Clerk
 - g) Citation Served on Amteck of Kentucky, Inc. DBA Kentucky Amteck, Inc.

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2. Affidavit of Corey Bard
3. Notice to Plaintiff of Removal; and
4. Notice to State court of Removal (without exhibit, consisting of the federal notice of removal)
5. Index of Documents Filed
6. List of Anticipated and Appearing Counsel of Record

Respectfully submitted,

/s/ Rebecca R. Kieschnick
Rebecca R. Kieschnick
Federal I.D. No. 0352
State Bar No. 21566900
Sandra Sterba-Boatwright
Federal I.D. No. 6857
State Bar No. 19169400

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KENTUCKY AMTECK, INC.

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HASKELL COMPANY OF FLORIDA
SNORKEL INTERNATIONAL, INC.**

DEFENDANTS

CIVIL ACTION NO. 7:08cv00003

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Rebecca R. Kieschnick
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ATTORNEYS FOR DEFENDANT SNORKEL INTERNATIONAL, INC.

Respectfully submitted,

/s/ Rebecca R. Kieschnick

Rebecca R. Kieschnick

Federal I.D. No. 0352

State Bar No. 21566900

Sandra Sterba-Boatwright

Federal I.D. No. 6857

State Bar No. 19169400

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